



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Ronald G. Acho, Esq.
Cummings, McClorey, Davis & Acho, P.L.C.
33900 Schoolcraft Road
Livonia, MI 48150

AUG 19 2009

RE: MUR 6152
Martin Manna

Dear Mr. Acho:

On June 5, 2009, this Office notified your client, Martin Manna, that the Federal Election Commission had ascertained information in the normal course of carrying out its supervisory responsibilities indicating that Mr. Manna may have violated the Federal Election Campaign Act of 1971, as amended, in connection with a mailer advocating the election of Congressman Joe Knollenberg.

After considering the circumstances in this matter, including your response, the Commission, on August 6, 2009, voted to dismiss this matter and accordingly, closed its file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Based on the information before the Commission, it appears that the mailer disseminated by your client did not include a disclaimer stating who paid for the communication. Specifically, the Act requires a disclaimer to appear on any public communication by any person that expressly advocates the election or defeat of a clearly identified candidate or solicits funds in connection with a Federal election. 2 U.S.C. § 441d. The disclaimer notice must state, *inter alia*, who paid for the communication and whether it was authorized by a candidate, an authorized political committee of a candidate, or its agents. *Id.* The Commission cautions your client to take steps to ensure that he uses appropriate disclaimers, in accordance with the Act and Commission regulations.

29044251487

Letter to Ronald Acho
Page 2

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact me, at (202) 694-1650.

Sincerely,



Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

29044251488

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Martin Manna

MUR: 6152

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Nadira (Daiza) Plater. *See* 2 U.S.C. § 437g(a)(1).

This matter involves allegations made by Complainant in connection with a letter purportedly sent by a group called the "Chaldeans for Congressman Joe Knollenberg" that advocated the re-election of Representative Joe Knollenberg. Specifically, the Complaint and its supplement, allege that the letter lacked a proper disclaimer; that the entity sending the letter failed to register and report with the Commission with the Commission as a political committee and disclose any disbursements made in connection with the mailer, as required by the Act; and may have made an unreported in-kind contribution or independent expenditure by using the mailing list developed and maintained by the "Chaldean News" to distribute the mailer. The complaint also alleged that the Chaldean Chamber Political Action Committee ("Chaldean Chamber PAC") may have been involved in the letter because the return address on the letter is the address of the PAC.

II. FACTUAL BACKGROUND

On or about October 28, 2008, a letter titled "Chaldeans for Congressman Joe Knollenberg" was sent to 1,500 households in Michigan's 9th Congressional District. The letter praises the accomplishments of Representative Knollenberg, the incumbent candidate in the 2008 general election, and concludes with the statement "[p]lease join us in casting your ballot for Congressman Joe Knollenberg on Tuesday, November 4th." The letter lists the names of eighteen

29044251489

individuals who apparently support the message, and an address appears at the bottom of the letter. The return address on the envelope containing the letter shows the name "Chaldeans for Knollenberg" and has the same address that appears at the bottom of the letter.

The original complaint alleges that the letter is a public communication that "clearly advocates for the election of a candidate for federal office," but it is missing the required authorization statement indicating whether a candidate or candidate's committee authorized the communication. *See* 2 U.S.C. § 441d(a); 11 C.F.R. §§ 100.26, 100.27, and 110.11. In addition, the complaint appears to raise doubts as to whether the letter was actually paid for by "Chaldeans for Congressman Joe Knollenberg," noting that the address listed for the organization on the letter is the same address as the Chaldean Chamber PAC.¹ Martin Manna serves as the treasurer of the Chaldean Chamber PAC. The complaint then infers, based on the number of likely recipients, that the letter exceeded the \$1,000 reporting threshold, and asserts that neither "Chaldeans for Congressman Joe Knollenberg" nor the Chaldean Chamber PAC is registered and reporting with the Commission. 2 U.S.C. §§ 433 and 434(b). Further, Complainant submitted a supplement to the complaint which alleges that the respondents may have made an unreported in-kind contribution or independent expenditure in connection with the letter by using a mailing list developed and maintained by the "Chaldean News" to distribute the letter. 2 U.S.C. § 434(b); 11 C.F.R. §§ 100.52 and 100.111. In the supplement, Complainant states that the letter was addressed to her using her maiden name (Nadira Daiza). However, Complainant explains that she has not used that name in 35 years except to subscribe to a publication called the Chaldean

¹ The Chaldean Chamber Political Action Committee is registered as a state political committee in Michigan, but is not registered and reporting with the Commission. *See* http://www.chaldeanchamber.com/joomla/index.php?option=com_content&task=view&id=22&Itemid=44 (last visited June 27, 2009). The complaint refers to the Chaldean Chamber Political Action Committee as the Chaldean Chamber of Commerce Political Action Committee, presumably as a result of a simple error.

News and that the Chaldean News is the only mailing she has received under her maiden name.

Complainant further states that the Chaldean News shares the same address as the Chaldean Chamber PAC and the return address listed on the Knollenberg mailer. Thus, the complainant alleges that the respondents' use of the Chaldean News mailing list results in a contribution or expenditure.

The available information indicates that the "Chaldeans for Congressman Joe Knollenberg" is not a real organization but was merely the name used by supporters of Knollenberg as an expression of solidarity. It also appears that the Chaldean Chamber PAC had nothing to do with the letter. It was actually Martin Manna, the Chaldean Chamber PAC's treasurer, who prepared and paid for the letter, but that he did so in his individual capacity, and not on behalf of the Chaldean-American Chamber of Commerce or its PAC.

Manna submitted more detailed information concerning the mailer, acknowledging that he paid approximately \$740 of his own funds (\$630 in stamps, \$40 in paper and \$70 in envelopes) to mail the letter, which was sent to approximately 1,500 households with Chaldean-American members. The response also indicated that Manna used a variety of sources to obtain names for the mailing list for the letter, including publicly available directories from various Chaldean organizations that are free of charge and two membership lists from the Chaldean News and the Chaldean American Chamber of Commerce which are only available to members but are free of charge.

Finally, the response stated that Manna discussed the letter and its contents with Representative Knollenberg and Bryce Sandler, a campaign staff member. Manna asserts that he contacted the candidate on several occasions and "specifically advised" him of the letter and its

29044251491

29044251492

contents, and the candidate "orally approved the letter." Manna contends that "[t]here was no 'specific endorsement'" but the candidate clearly supported the letter and its contents. Manna contends that because he was sending such a letter for the first time, he wanted to do it properly and consulted with Bryce Sandler, a person who was identified as the Committee's "point" and "liaison" person and "a key campaign committee member of the candidate." Manna reportedly called Sandler on at least three occasions, advised him of the contents of the letter, and asked whether the letter needed a disclaimer and what he had to do to avoid problems. Sandler told Manna "there would be no problem." The response stresses that Manna had a very clear recollection of the discussion with Sandler, that the letter was coordinated with both the candidate and the candidate's committee, and that the letter would not have been sent without this coordination. Manna contends that "[t]here was no 'specific endorsement'" but the candidate clearly supported the letter and its contents. *Id.* Finally, on October 28, 2008, Manna advised the Committee through an email to Sandler that the letter was being mailed and provided an estimate of the cost for the letter. The response included a copy of the email which states, in relevant part, "This hit just about every Chaldean household in the district. Just so you know, I love Joe dearly and personally paid for the letter/postage (about \$2,000). Should hit homes tomorrow."²

² The \$2,000 was apparently Manna's initial estimate of the costs of the letter, costs which he subsequently itemized and aggregated at only \$740. The costs of the letter were not reported as in-kind contributions by the Knollenberg Committee. However, the Knollenberg Committee disclosure reports reflect that Manna made a \$1,175 in-kind contribution, dated October 25, 2008, for "advertising," apparently related to a Knollenberg advertisement published in a Chaldean newspaper and funded by Manna, and a \$500 direct contribution, dated October 29, 2008.

III. ANALYSIS

A. Alleged Failure to Register as a Political Committee

The complaint alleges that the entity responsible for the letter violated the Act by failing to register and report as a federal political committee, noting that neither "Chaldeans for Knollenberg" or the Chaldean Chamber PAC, are registered and reporting with the Commission. Complaint at 2. See 2 U.S.C. §§ 433 and 434(b). The Act defines a "political committee" as any committee, club, association, or other group of persons that receives "contributions" or makes "expenditures" for the purpose of influencing a federal election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431 (4)(A). To address overbreadth concerns, the Supreme Court has held that only organizations whose major purpose is campaign activity can potentially qualify as political committees under the Act. See, e.g., Buckley v. Valeo, 424 U.S. 1, 79 (1976); FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 262 (1986).

As discussed above, the available information indicates that, although the letter lists eighteen individuals who apparently supported the message in the letter, it was the product of an individual, Martin Manna, who created, disseminated and paid for it, not the product of a group called "Chaldeans for Congressman Joe Knollenberg." In addition, at \$740, the costs of the letter fall below the \$1,000 threshold of 2 U.S.C. § 431(4)(A).

B. Alleged Failure to Include a Disclaimer in a Communication

The complaint alleges that "the letter does not contain any disclaimer notice on either the letter or envelope," although it is a public communication which "must 'clearly state the name and permanent street address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.'" The complaint

29044251493

argues that the result is that, "it is impossible to conclude whether the letter was paid for and authorized by Congressman Joe Knollenberg, committees whom he is affiliated with, or by independent committees."

The Act requires a disclaimer to appear on any public communication by any person that expressly advocates the election or defeat of a clearly identified candidate or solicits funds in connection with a Federal election. 2 U.S.C. § 441d. The disclaimer notice must state, *inter alia*, who paid for the communication and whether it was authorized by a candidate, an authorized political committee of a candidate, or its agents. *Id.* A public communication includes a mass mailing (more than 500 substantially similar mailings within 30 days). *See* 2 U.S.C. § 441d(a); 11 C.F.R. §§ 100.26, 100.27, and 110.11. Express advocacy is defined as including any communication that uses phrases such as "Vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," and "Smith for Congress." 11 C.F.R. § 100.22(a). The available information indicates that the letter at issue here required a disclaimer stating who paid for the communication and whether it was authorized by a candidate or a candidate's committee or their agents. First, Manna stated that the letter was sent to 1500 individuals, and therefore, it was a mass mailing. 2 U.S.C. § 441d(a); 11 C.F.R. §§ 100.26, 100.27, and 110.11. Second, the letter expressly advocates the re-election of Joe Knollenberg. The letter praises the accomplishments of Representative Knollenberg, a Federal candidate, and closes with the statement "[p]lease join us in casting your ballot for Congressman Joe Knollenberg on Tuesday, November 4th." This language clearly falls within the definition of express advocacy.

11 C.F.R. § 100.22(a)

29044251494

29044251495

Although the Act required the letter to contain a disclaimer, it failed to do so. The name "Chaldeans for Congressman Joe Knollenberg" appears at the top of the letter, but it does not state whether the group paid for letter, and available information establishes not only that the group did not pay for the letter, but that the group does not even exist. Nor was the letter paid for by the eighteen individuals whose names appear at the bottom of the letter. Instead, it appears that the letter was created, disseminated and paid for by only one of the eighteen individuals, Martin Manna. Nor does the letter contain a statement indicating whether it was authorized by a candidate, a candidate's committee, or an agent of a candidate. As a result, Manna violated 2 U.S.C. § 441d by not including a proper disclaimer on the letter. However, due to the *de minimis* nature of the activity at issue, the Commission has exercised its prosecutorial discretion to dismiss the disclaimer allegation and cautions Mr. Manna take steps to ensure that appropriate disclaimers are included in future communications expressly advocating the election or defeat of a clearly identified candidate, pursuant to 2 U.S.C. § 441d and 11 C.F.R. § 110.11. *See Heckler v. Chaney*, 270 U.S. 821 (1985).

C. Alleged Reporting Violation

The complaint alleges that the respondents may have made, but failed to report, an in-kind contribution or independent expenditure in connection with the costs of the letter and with the use of a mailing list developed and maintained by the "Chaldean News" to distribute the letter, explaining that Martin Manna and another individual who signed the Chaldeans for Congressman Joe Knollenberg letter are managers of the publication. 2 U.S.C. § 434(b); 11 C.F.R. §§ 100.52 and 100.111.

29044251496

The Act defines the term "contribution" to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a). The term "anything of value" includes membership lists and mailing lists. 11 C.F.R. § 100.52(d)(1). An expenditure made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees or their agents" constitutes an in-kind contribution to the candidate. 2 U.S.C. § 441a(a)(7)(B)(i). A communication is coordinated with a candidate, a candidate's authorized committee, or agent of either when the communication satisfies the three-pronged test set forth in 11 C.F.R. § 109.21(a): (1) the communication is paid for by a person other than a candidate, the candidate committee, or an agent of either; (2) the communication satisfies at least one of the content standards set forth in 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of the conduct standards set forth in 11 C.F.R. § 109.21(d).

Manna acknowledges paying for the letter. Therefore, the payment prong of 11 C.F.R. § 109.21(a)(1) is satisfied. The content prong is also satisfied because the letter is a public communication that contains express advocacy. *See* 11 C.F.R. § 109.21(c)(3). The conduct prong of the coordinated communications regulations is satisfied if, among other things, the communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or agent thereof, assents to the suggestion; if the candidate, authorized committee, or agent is "materially involved in decisions" regarding the content of the communication, intended audience, means or mode of the communication, specific media outlet used, timing or frequency of the communication, or size or

29044251497

prominence of a printed communication or duration of a communications by means of a broadcast, cable or satellite; or if a communication is created, produced or distributed after one or more substantial discussions between the person paying for the communication and the candidate, candidate's committee, or agent thereof. 11 C.F.R. § 109.21(d). Based on the available information regarding the purported conversations between Manna and the Knollenberg Committee, it appears that the letter may have been created, produced, or distributed at the suggestion of Manna and that Knollenberg assented to the letter. It is also possible that Knollenberg and/or Sandler may have been materially involved in decisions regarding the letter or that the letter was created, produced, or distributed after one or more substantial discussions between Manna and Knollenberg and Manna and Sandler. *See discussion supra* at 3-4.

An in-kind contribution is treated as both a "contribution" to and an "expenditure" by the political committee receiving the in-kind contribution. 11 C.F.R §§ 100.111(e); 104.13(a)(2). An authorized committee of a candidate must report and itemize all contributions received from individuals that aggregate in excess of \$200 per election cycle. 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(a)(4). An in-kind contribution must also be reported as an expenditure on the same report. 11 C.F.R. §§ 104.3(b) and 104.13(a)(2).

It appears that the disbursements made in connection with the letter, including any value associated with the use of a pre-existing mailing list, should have been reported either as an independent expenditure, or, if coordinated with Knollenberg, as both a contribution to and an expenditure by the Knollenberg Committee. The available information provided some evidence that the communication was coordinated with Knollenberg. Nevertheless, even if the expenditure was coordinated, the value of any mailing lists used to distribute the letter is

unknown, is likely to be minimal, and would be difficult to ascertain because the lists are not commercially available.

Given the lack of information and the *de minimis* nature of the violation, the Commission has exercised its prosecutorial discretion to dismiss the allegation of the failure to report the disbursements made in connection with this letter. *See Heckler v. Chaney*, 270 U.S. 821 (1985).

29044251498